

**UNITED STATES DISCTRRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS**

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ARIAD PHARMACEUTICALS, INC.,	)	
MASSACHUSETTS INSTITUTE OF	)	
TECHNOLOGY, THE WHITEHEAD	)	
INSTITUTE FOR BIOMEDICAL RESEARCH,	)	Civil Action No. 02 CV 11280 RWZ
and THE PRESIDENT AND FELLOWS OF	)	
HARVARD COLLEGE	)	
	)	U.S. District Judge Rya W. Zobel
Plaintiffs,	)	
	)	
v.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant.	)	

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**DEFENDANT ELI LILLY AND COMPANY'S  
SECOND MOTION FOR JUDGMENT AS A MATTER OF LAW**

Defendant Eli Lilly and Company (“Lilly”) moves for a Judgment as a Matter of Law (“JMOL”) pursuant to FRCP 50(a). The evidence presented by Lilly regarding invalidity of the ‘516 patent is so compelling that no reasonable jury could find for Plaintiffs. Furthermore, Plaintiffs have failed to present sufficient evidentiary support that Lilly has directly or indirectly infringed the ‘516 patent under 35 U.S.C. § 271 and have failed to prove damages in that the royalty base must be limited to those patients that directly infringe and Plaintiffs have failed to make that proof. Further support for Lilly’s JMOL is provided in the attached memorandum of law in support thereof.

**REQUEST FOR ORAL ARGUMENT**

Lilly respectfully requests oral argument on its motion for JMOL.

Respectfully submitted,

Date: April 27, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 27, 2006.